



U.S. SENATE REPUBLICAN POLICY COMMITTEE

Conference Report Highlights

April 29, 2009

## Highlights of the Conference Report to Accompany S. Con. Res. 13, the FY 2010 Budget Resolution

*The Conference Report, H. Rept. 111-89, was filed on April 27, 2009. No House or Senate Republican signed the conference report.*

### Noteworthy

The conference report to accompany S. Con. Res. 13, the fiscal year 2010 budget resolution, sets total outlays in fiscal year 2010 at \$3.0 trillion and total revenues at \$2.3 trillion.

- **Reconciliation:** The conference report includes reconciliation instructions to the Senate Finance Committee and the Senate Health, Education, Labor, and Pensions Committee to reduce the deficit by \$1 billion over five years. This would allow major health reform and carbon tax legislation to be done pursuant to reconciliation instructions, within the constraints of the Byrd Rule.
- **Discretionary Spending:** The conference report provides for \$1.226 in discretionary budgetary authority (BA) and \$1.376 trillion in discretionary outlays, including \$130 billion in BA for continuing overseas war operations and \$10 billion in BA for disaster spending in FY 2010.
- **Mandatory Spending:** The conference report provides for \$2.218 trillion in mandatory budgetary authority and \$2.178 trillion in mandatory outlays for FY 2010.
- **Revenues and deficits:** The conference report assumes \$2.322 trillion in revenues in FY 2010 and a revenue reduction of \$764 billion below current law for FYs 2009-2014. Deficits drop from \$1.233 trillion in FY 2010 to \$523 billion in FY 2014. Debt held by the public rises from \$8.778 trillion in FY 2010 to \$11.499 trillion in FY 2014.
- **Budget enforcement:** The conference report continues certain Senate points of order including the point of order for pay-as-you-go (PAYGO) and against reconciliation legislation that increases the deficit, and adds a new point of order related to surface transportation funding. It also waves PAYGO in the House for certain tax relief if a statutory PAYGO is passed by the House, and does not require health reform to be paid for over the six-year window. The resolution drops many of the points of order that were added on the floor of the Senate as protections for middle class families and the economy.

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- **Reserve Funds:** The conference report includes 34 reserve funds in the Senate to suggest support for policies including modernizing health care, promoting clean technology, climate change legislation, higher education loan reform, economic stabilization, judicial pay, defense contracting reform, the re-importation of prescription drugs, an investigation into the current financial crisis, and increased transparency at the Federal Reserve. These reserve funds are not binding in any way.
  - **House and Senate Action:** Today the House passed the conference report to accompany S. Con. Res. 13 by a vote of 233-193, with no Republicans voting in favor. The Senate is scheduled to receive the conference report from the House and vote on passage today.
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## **Bill Provisions**

### **Reconciliation**

The conference report to accompany S. Con. Res. 13 contains reconciliation instructions in the Senate for the Committee on Finance and the Committee on Health, Education, Labor, and Pensions. These committees are instructed to report legislation in their jurisdictions before October 15<sup>th</sup> that reduces the deficit by a total of \$1 billion each over the period of fiscal years (FYs) 2009 to 2014. For the House, reconciliation instructions of \$1 billion each in deficit reduction for “health care reform” are included for the House Committees on Energy and Commerce, Ways and Means, and Education and Labor, and for “investing in education” for the Committee on Education and Labor. Legislation that is passed pursuant to reconciliation instructions operates under special procedures that require only a simple majority in the Senate to pass, and is subject to certain restrictions on the content and the debt impact that are mostly contained in Section 313 of the Congressional Budget Act of 1974, otherwise known as the Byrd Rule.

The reconciliation instructions allow the five committees to report legislation relating to a broad range of policies in their jurisdictions, including but not limited to higher education student loans, a carbon tax, or legislation relating to health care.

### **Discretionary Spending**

The budget resolution provides a binding 302(a) budget authority and outlay allocation to the Appropriations Committee.<sup>1</sup> The 302(a) number is the top level for discretionary spending in any given year. The total amount of regular discretionary spending budgetary authority is \$1.086 trillion; of this, \$556.1 billion is regular defense discretionary spending and \$529.8 billion is regular non-defense discretionary spending. Including \$130 billion for continuing overseas war

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<sup>1</sup> The Appropriations Committee subsequently breaks the 302(a) number into twelve 302(b) allocations, which are the allocations to the individual Appropriations Subcommittees.

operations and \$10 billion for disaster spending brings total FY 2010 budgetary authority to \$1.226 trillion and outlays to \$1.376 trillion.

## Mandatory Spending

The conference report provides for \$2.218 trillion in mandatory budgetary authority and \$2.178 trillion in mandatory outlays for FY 2010. This amount reflects adjustments for mandatory savings pursuant to reconciliation instructions.

## Total Spending

The conference report allows for total budgetary authority of \$3.444 trillion and \$3.555 trillion in outlays in FY 2010.

Function	Title	FY 2010 Budget Authority (billions \$)	
		Senate passed resolution	Conference Report
050	National Defense	\$691.703	\$562.033
150	International Affairs	50.667	47.866
250	General Science, Space, and Technology	31.139	31.139
270	Energy	4.489	4.989
300	Natural Resources and Environment	37.387	37.587
350	Agriculture	23.690	23.690
370	Commerce and Housing Credit	64.375	64.375
400	Transportation	75.246	88.151
450	Community and Regional Development	16.338	18.308
500	Education, Training, Employment, and Social Services	94.430	94.430
550	Health	385.447	384.309
570	Medicare	442.828	449.668
600	Income Security	536.609	536.740
650	Social Security	703.408	703.408
700	Veterans Benefits and Services	106.490	106.498
750	Administration of Justice	52.499	53.400
800	General Government	22.324	21.979
900	Net Interest	168.758	168.353
920	Allowances	-16.032	1.157
950	Undistributed Offsetting Receipts	-83.592	-83.922
970	Overseas Deployments and Other Activities	0	130.000
<b>Total</b>		<b>\$3,409.433</b>	<b>\$3,444.158</b>

## **Revenues and Deficits**

The conference report provides for \$2.322 trillion in revenues in FY 2010 and a revenue reduction of \$764 billion below current law for FYs 2009-2014. Deficits go from \$1.233 trillion in FY 2010 to \$523 billion in FY 2014. Debt held by the public rises from \$8.778 trillion in FY 2010 to \$11.499 trillion in FY 2014. These deficit amounts are likely to be understated, since the budget resolution does not include the cost of certain expenditures included in President Obama's budget, such as the cost of adjusting the sustainable growth rate formula for doctors for FYs 2012-2014, patching the Alternative Minimum Tax in FY 2013 and FY 2014, and extending the Making Work Pay tax credit past 2010.

## **Budget Enforcement**

Enforcement of the budget resolution is based primarily upon 60-vote points of order and reconciliation procedures. The conference report continues the budget enforcement mechanisms included in the FY 2008 and FY 2009 budget resolutions (S. Con. Res. 21 and S. Con. Res. 70, respectively), which are 60-vote points of order that: require pay-as-you-go (PAYGO) for new spending or tax relief, prevent reconciliation legislation that increases the deficit, maintains 60-vote thresholds for budgetary points of order, prevent legislation that increases long-term deficits, and prevent appropriations legislation that constitutes changes in mandatory programs.

### **PAYGO**

The conference report maintains the pay-as-you-go (PAYGO) restrictions in the Senate which were included in the FY 2008 budget resolution (S. Con. Res. 21), which created a 60-vote point of order for any legislation that increased the on-budget deficit within the six-year or eleven-year budget window. The resolution allows PAYGO to be waived in the Senate for health reform, which would have to be fully paid for only over the eleven-year budget window. Section 421 of the resolution allows the House of Representatives to waive House PAYGO rules related to two years of adjustment to reimbursement rates for doctors, continuing certain elements of the 2001 and 2003 tax cuts, extending for three years the Alternative Minimum Tax patch, and extending the current law estate tax if the House has previously passed (or is passing in the relevant tax relief measure) statutory PAYGO restrictions. This would allow the House to consider and pass \$2.3 trillion worth of legislation while ignoring the House PAYGO rule.

### **Dropped from Senate-passed Resolution**

The conference report drops many budget enforcement provisions that were added in by amendment on the Senate floor, including (but not limited to) points of order against:

- Increasing federal income taxes on families making less than \$250,000 a year (Ensign amendment, passed 98-0);
- Energy-tax increases on middle-income families (Graham amendment, passed 65-33),
- Legislation imposing a marriage tax penalty (Hutchison amendment, accepted by voice vote);

- Legislation that causes significant job loss (Bond amendment, passed 54-44);
- Legislation that eliminates the ability of Americans to keep their health plan or their choice of doctor (DeMint amendment, accepted by voice vote); and
- Legislation that raises the level of revenues above the amount provided for in the resolution through a proposal to scale back the deduction for charitable contributions (Thune amendment, passed 94-3).

The conference report does include the following budget enforcement provisions:

#### **Discretionary Spending limits (Section 401)**

Creates a 60-vote point of order against any legislation that increases discretionary spending higher than discretionary spending limits of \$1.39 trillion in budgetary authority and \$1.22 trillion in outlays for FY 2009 and \$1.08 trillion in budgetary authority and \$1.27 trillion in outlays for FY 2010. Adjustments to the cap are allowed for legislation that improves program integrity, such as continuing disability reviews and Supplemental Security Income redeterminations at the Social Security Administration, enhanced Internal Revenue Service tax enforcement, appropriations for Health Care Fraud and Abuse Control at HHS, and legislation dealing with improper payments of unemployment insurance, certain appropriations for the Low-Income Home Energy Assistance Program (LIHEAP), or bills to support the wars in Iraq and Afghanistan.

#### **Advanced Appropriations (Section 402)**

Modifies the 60-vote point of order against any appropriations in FY 2010 bills that would first become effective in any year after FY 2010 (the point of order also is in place for FY 2011 bills) to allow the exemption to apply to the Corporation for Public Broadcasting and Medical Services, Medical Support and Compliance, and the Medical Facilities accounts of the Veterans Health Administration at the Department of Veterans Affairs. The point of order would also not apply for the following accounts: Employment and Training Administration; Job Corps; Education for the Disadvantaged; School Improvement; Head Start; Special Education; Career, Technical, and Adult Education; Payment to Postal Service; and Tenant-based and Project-based Rental Assistance.

#### **Emergency Legislation (Section 403)**

Modifies the existing point of order dealing with the designation of certain legislation as “emergency legislation” to provide consistent treatment for emergency legislation with respect to enforcement of various points of order and revisions pursuant to deficit-neutral reserve funds.

#### **Short-term Deficit (Section 404)**

Extends the expiration date to September 30, 2018 on the existing 60-vote point of order against any legislation that would increase the deficit more than \$10 billion in any fiscal year provided for in the budget unless it is fully offset over all the years covered by the budget.

## **Surface Transportation Funding (Section 405)**

Creates a new 60-vote point of order against any legislation that extends the authority of or reauthorizes surface transportation programs from sources other than the Highway Trust Fund. The objective of this point of order, which was not in the House-passed or Senate-passed resolutions, is unclear.

## **Senate Reserve Funds**

In general, a reserve fund permits the Chairman of the Committee on the Budget to increase the section 302(a) allocation and other appropriate levels set out in this resolution once certain conditions have been met. The authority to make these adjustments is solely within the discretion of the Chairman and may be made when the committee of jurisdiction reports a measure that satisfies all of the conditions set out in the reserve fund.

These funds generally allow for increased spending as long as the spending is offset with tax increases or spending cuts elsewhere, and must be deficit neutral over both the 2009-2014 and 2009-2019 budget windows unless otherwise noted. The conference report to accompany S. Con. Res 13 contains 14 reserve funds for the House and 34 reserve funds for the Senate. These reserve funds are not binding commitments but provide an outline of potential legislation that may be considered for the current year.

## **Reserve Fund to Transform and Modernize America's Health Care System (Section 301)**

Section 301 provides a deficit-neutral reserve fund for one or more pieces of legislation that reduce excess cost growth in health care spending, are fiscally sustainable, and conform to the following requirements: 1) restrain the growth of health costs; 2) reduce wasteful and inefficient spending; 3) "aim for quality, affordable health care for all Americans"; 4) provide portability of coverage; 5) guarantee choice; 6) invest in prevention and wellness; 7) improve patient safety and quality of care; and 8) pay for itself by reducing health care cost growth, improving productivity, or dedicating additional sources of revenue. Such changes are required to be deficit-neutral over only the 11-year budget window and not the 6-year and 11-year budget windows as is generally required.

Section 301 also provides for increasing the reimbursement rate for physician services (the so-called "doc fix"), and contains provisions for repealing current outpatient treatment caps and addressing access problems in rural areas as intended by Section 220 of the Senate-passed resolution.

## **Reserve Fund for Energy and Environment (Section 302)**

Section 302 provides a deficit-neutral reserve fund for future legislation to reduce dependence on imported energy, produce "green jobs," promote renewable energy, create a clean energy investment fund, improve electricity transmission, encourage conservation and efficiency, make improvements to the Low Income Home Energy Assistance Program (LIHEAP), implement

water settlements, or preserve or protect public lands, oceans, or coastal areas. The legislation may include tax provisions.

The reserve fund also allows for climate change legislation that invests in clean energy technology, decreases greenhouse gas emissions, creates new jobs in a “clean technology economy,” strengthens the manufacturing competitiveness of the United States, diversifies the domestic clean energy supply, protects consumers, provides incentives for cost-savings through energy efficiencies, provides voluntary opportunities for agriculture and forestry communities to contribute to lowering greenhouse gases, and helps families, workers, communities, and businesses make the transition to a clean energy economy.

The reserve fund does not include language added on the Senate floor that increased oil and gas development in the Outer Continental Shelf (Hutchison amendment) or one that provided that climate change legislation could not increase electricity or gasoline prices (Thune and Boxer amendments).

### **Reserve Fund for Higher Education (Section 303)**

Section 303 provides a deficit-neutral reserve fund to make higher education more affordable, including through expanding Pell Grants or increasing college enrollment and completion rates for low-income students.

### **Reserve Fund for Child Nutrition and WIC (Section 304)**

Section 204 provides a deficit-neutral reserve fund for reauthorization of the nutrition program for Women, Infants, and Children (WIC).

### **Reserve Fund for Infrastructure (Section 305)**

Section 305 provides a deficit-neutral reserve fund for federal investments in infrastructure, including public housing, energy, water, rail, or other infrastructure projects. It also includes a provision for surface transportation funded out of the Highway Trust Fund, a provision for authorizing multimodal transportation projects that meet certain accountability and cost-benefit requirements, and a provision for flood control projects and insurance reform.

### **Reserve Fund for Economic Stabilization (Section 306)**

Section 306 provides a deficit-neutral reserve fund that includes the possibility of tax legislation aimed at the U.S. domestic manufacturing sector, including worker training, federal research and development, development of advanced manufacturing techniques to promote energy efficient projects, and advanced battery development. The reserve fund also contains a provision for deficit-neutral tax relief, including the extension of expiring and expired tax relief, as long as it is paid for over the 6- or 11-year budget window. It also includes provisions providing for tax reform that leads to a “fair and more efficient tax system,” trade legislation, and housing assistance, including low-income rental assistance and assistance through the Housing Trust Fund.

Section 306 also provides for legislation that reduces the unemployment rate, provides assistance to the unemployed, or improves the implementation of the unemployment compensation program.

#### **Reserve Fund for Veterans (Section 307)**

Section 307 provides for a deficit-neutral reserve fund to, among other things, expand the number of disabled military retirees who receive both disability compensation and retired pay, eliminate the offset between Survivor Benefit Plan annuities, and expand veterans' benefits, especially in rural areas.

#### **Reserve Fund for Judicial Pay, Postal Retirees, and Certain Pension Obligations (Section 308)**

Section 308 provides for a deficit-neutral reserve fund that provides for salary adjustments for justices and judges of the United States or an increase in the number of federal judges. Section 308 also provides for legislation funding postal retiree health coverage and deficit-neutral legislation authorizing funds to cover the full cost of pension obligations for current and past employees of laboratories and environmental cleanup sites.

#### **Reserve Fund for Defense Acquisition and Contracting Reform (Section 309)**

Section 309 provides for a deficit-neutral reserve fund to enhance the federal acquisition or contracting workforce, reduce the use of no-bid and cost-plus contracts, and reform Defense Department processes for acquiring weapons systems, among other things.

#### **Reserve Fund for Counties and Schools (Section 310)**

Section 310 provides for a deficit-neutral reserve fund to provide for the reauthorization of the Secure Rural Schools and Community Self Determination Act of 2000 and/or make changes to the Payments in Lieu of Taxes Act of 1976.

#### **Reserve Fund for Food and Drug Administration (FDA) (Section 311)**

Section 311 provides for a deficit-neutral reserve fund to authorize the FDA to assess user fees on manufacturers and importers of products regulated by the FDA. It also contains a provision to allow the importation of prescription drugs approved by the FDA and allows for legislation that would "improve the safety of the food supply in the United States."

#### **Current Financial Crisis (Section 312)**

Section 312 provides for a deficit-neutral reserve fund that provides resources for a comprehensive investigation into the current financial crisis, hold those responsible accountable, and make recommendations as to how to prevent such a crisis from happening again in the future.



### **Increased Transparency at the Federal Reserve (Section 313)**

Section 313 provides for a deficit-neutral reserve fund for acts of Congress that increase transparency at the Federal Reserve, including audits of the Board of Governors of the Federal Reserve, including an evaluation of the appropriate number and the associated costs of the Federal Reserve banks, publication on the Fed's website of the nature and amounts of collateral that the central bank is accepting on behalf of American taxpayers in the various lending programs created by the Board to address the financial crisis, the extent to which changes in the valuation of special purpose vehicles created by the Fed are the result of losses on collateral which will not be recovered, the number of borrowers that participate in each of the lending programs and the extent to which lending is concentrated in one or more institutions, and information on the Fed's reliance on contracting for the various lending programs.

The reserve fund also requires the Fed to reveal the identity of each entity to which the Board has provided loans and the amount of such loans since March 24, 2008, shortly after the Fed-brokered acquisition of Bear Stearns by JP Morgan. Such disclosure will also include a full accounting of what each entity is doing with the funds.

### **Reserve Fund for 21<sup>st</sup> Century Community Learning Centers (Section 314)**

Section 314 provides for a deficit-neutral reserve fund for legislation that would increase funding for 21<sup>st</sup> Century Community Learning Centers.

### **Reserve Fund for Resources to Firefighters and Fire Departments (Section 315)**

Section 315 provides for a deficit-neutral reserve fund for legislation that would provide firefighters and fire departments with resources under the Assistance to Firefighters Grant and the Staffing for Adequate Fire and Emergency Response Firefighters Grant of FEMA.

### **Reserve Fund for Tax Equity for States without Personal Income Taxes (Section 316)**

Section 316 provides for a deficit-neutral reserve fund for legislation that would extend permanently the deduction for state and local sales taxes, extend incentives for enhanced charitable giving from individual retirement accounts, or enhance the employer-provided child care credit and the dependent care tax credit.

### **Reserve Fund to Promote Individual Savings and Financial Security (Section 317)**

Section 317 provides for a deficit-neutral reserve fund for legislation that would promote financial security through financial literacy, retirement planning, and savings incentives, including individual retirement planning and certain savings incentives.

### **Reserve Fund to Increase FDIC and NCUA Borrowing Authority (Section 318)**

Section 318 provides for a deficit-neutral reserve fund for legislation that would increase the borrowing authority of the Federal Deposit Insurance Corporation and the National Credit Union Administration.

**Reserve Fund for Improving the Well-Being of Children (Section 319)**

Section 319 provides for a deficit-neutral reserve fund for legislation that makes improvements to child welfare programs, improves the federal foster care payment system, or provides funds to states for a program of home visits to low-income mothers-to-be.

**Reserve Fund for a 9/11 Health Program (Section 320)**

Section 320 provides for a deficit-neutral reserve fund for legislation that establishes a program addressing adverse health impacts linked to the September 11, 2001 attacks.